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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ARMANDO MENDOZA, Defendant and Appellant.	E053345 (Super.Ct.No. FWV902827) OPINION

APPEAL from the Superior Court of San Bernardino County. Mary E. Fuller, Judge. Affirmed.

John D. O'Loughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Gary W. Brozio, and William M. Wood, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Armando Mendoza appeals after he was convicted of grand theft. The sole contention he raises on appeal is that the imposition of a 10 percent administrative collection fee with respect to his restitution and parole restitution fines was unauthorized. We reject the contention and affirm.

FACTS AND PROCEDURAL HISTORY

The charged offenses involved the theft of some copper wire or cable from a scrap metal business in Montclair. In the early morning hours of October 13, 2009, a witness at a nearby storage yard saw two men putting some copper wire or cable into the back of a Jeep. The witness called police to report the activity. After the Jeep had left, the witness investigated further, and saw a hole in the fence of the scrap metal business, and large empty wooden cable spools inside. He called the police again to report the additional information.

After the report was broadcast, an officer on patrol saw a dark-colored Jeep matching the general description in the report, with a lot of heavy cable or wire protruding from the back. The officer stopped the Jeep; defendant was in the front passenger seat. Defendant made a number of false statements to the officer. He told the officer that he lived in Pomona, and then said that he lived in Rancho Cucamonga, but the Jeep's owner, Richard Dean, was driving defendant to defendant's girlfriend's house in Pomona. Defendant also claimed not to know his girlfriend's address or telephone number. Defendant did not tell the officer that he actually lived in a house next door to the scrap metal yard.

The owner of the scrap metal yard went to the police station after defendant and Dean were apprehended. He identified the cable—a distinct, heavy, specialty cable—which had been in his yard the day before the theft. There had been no hole in the fence before the theft, and he did not give anyone permission to take the cable. The stolen cable was worth about $1,000.

In May 2010, defendant was charged by a first amended information with grand theft and receiving stolen property. At trial, he testified in his own behalf. He denied stealing the wire. He testified that Dean, the Jeep's owner, had come to pick up defendant to take him to Los Angeles to get money to fix defendant's car. Dean came much earlier in the morning than planned. Defendant got into the Jeep and Dean drove off, but he soon stopped, because some wire he was carrying was coming out of the back of the Jeep. Defendant helped Dean shove the wire back into the Jeep, but otherwise he had nothing to do with it, and was not curious about where Dean had gotten it. Shortly after Dean had resumed driving, the police stopped the Jeep.

Defendant asserted that he had not stolen the wire, that he had not seen the hole in the fence of the scrap metal yard next to his residence, and that he did not see the large, empty wooden wire spools in the yard. He also stated that the fence had had other holes in it before the theft. Defendant denied stealing the wire but believed that Dean had stolen it.

The jury, pursuant to the court's instructions, returned a verdict finding defendant guilty of grand theft in count 1, and returned no verdict on count 2, receiving stolen property.

The court found two prison term priors (Pen. Code, § 667.5, subd. (b)) to be true. Sentencing took place on March 22, 2011. The court sentenced defendant to four years in state prison. The court also imposed a restitution fine of $220, consisting of a $200 restitution fine (Pen. Code, § 1202.4, subd. (b)), plus a 10 percent collection fee, and imposed and stayed a parole revocation restitution fine of $220, again consisting of a fine of $200 for parole revocation (Pen. Code, § 1202.45), plus a 10 percent collection fee.

Defendant filed a notice of appeal. He contends that the imposition of the 10 percent collection fees was unauthorized.

ANALYSIS

I. The Addition of a 10 Percent Administrative Collection Fee Was Proper

Defendant contends that the imposition of a 10 percent collection fee, with respect to the restitution and the probation revocation restitution fines, was unauthorized. Penal Code section 1202.4, subdivision (l), provides that, "At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county." Defendant contends that the San Bernardino County Code of Ordinances contains no indication that the San

Bernardino County Board of Supervisors (hereafter, the County) had exercised its discretion to adopt any enactment to impose a collection fee in connection with recouping the cost of collecting restitution fines. Thus, there was no lawful basis for the court's order.

An "unauthorized sentence" is one that cannot lawfully be imposed under any circumstances. (See *People v. Scott* (1994) 9 Cal.4th 331, 354.) Normally, the decision to impose a particular restitution fine is reviewed under the abuse of discretion standard, but when the propriety of the fine (or portion thereof) turns on the interpretation of a statute or similar legislation, the issue is one of law, which is reviewed de novo. (*People v. Williams* (2010) 184 Cal.App.4th 142, 146 [Fourth Dist., Div. Two].)

Defendant points to San Bernardino County Code, section 16.0203B (*sic*: 16.0203A), subdivisions (gg) and (hh), which provide respectively for a "Victim restitution fee" of "$10% of amount collected," and a "Restitution fund fee" of "$10% of amount collected." (San Bernardino County Ordinance No. 4141, § 5, pp. 19-20; see <http://www.sbcounty.gov/cob/docs/ordinance4141.pdf> (as of June 21, 2012).) Defendant argues that, because the 10 percent fees apply to "amount[s] collected," the fees must be intended to be "charged to the victim for whom 'amounts' are 'collected,' not fees to be imposed on the defendant: at the time of the order imposing the 10% fee on the amount of restitution, nothing would have been collected."

The argument is without merit.

First, defendant has cited the wrong provision. The fee schedule is presently contained in the County's code of ordinances at section 16.0203A, not 16.0203B.

Second, defendant has cited an inapplicable version of the ordinance. Ordinance No. 4141, containing the 10 percent collection fees in section 16.0203A, subdivisions (gg) and (hh), was adopted effective July 1, 2011, after the date that defendant was sentenced. Before that date, the version of the fee schedule in effect was pursuant to ordinance No. 4101, effective July 1, 2010. (Ord. No. 4101, § 42, p. 239; see <http://www.sbcounty.gov/cob/docs/ordinance4101.pdf> (as of June 21, 2012).) Ordinance No. 4101, section 42, amended the County's code of ordinances, section 16.0230, subdivisions (m) and (n) to provide, respectively, for a "Victim restitution fee" of "10% of amount collected," and a "Restitution fund fee" of "10% of amount ordered." This was the version in effect at the time of defendant's sentencing.

Third, and most importantly, this history sheds light on the proper interpretation of these 10 percent fee provisions. Defendant proposes, as to both provisions, that the 10 percent fee is intended to be paid *by the victim*, rather than by the defendant. We disagree. Penal Code section 1203.1, subdivision (l), provides: "If the court orders restitution to be made to the victim, the entity collecting the restitution may add a fee to cover the actual administrative cost of collection, but not to exceed 15 percent of the total amount ordered to be paid. The amount of the fee shall be set by the board of supervisors if it is collected by the county and the fee collected shall be paid into the general fund of the county treasury for the use and benefit of the county. The amount of the fee shall be

set by the court if it is collected by the court and the fee collected shall be paid into the Trial Court Operations Fund or account established by Section 77009 of the Government Code for the use and benefit of the court." Defendant's construction might apply as to former section 16.0230, subdivision (m), providing for a "Victim restitution fee" of "10% of [the] amount *collected*." (Ord. No. 4101, § 42, p. 239.) But former section 16.0230, subdivision (n), did not address direct victim restitution; it applied a "Restitution *fund* fee" of "10% of [the] amount *ordered*." (*Ibid.*) The reflection in the legislation of a 10 percent fee is a precise mirror of the provision in Penal Code section 1202.4, subdivision (l), that the costs of collection, from the defendant, should "not . . . exceed 10 percent of the amount ordered to be paid." The legislative intent is clear: As to the costs of collection of fines for restitution funds (as opposed to direct victim restitution), the County board of supervisors manifestly exercised its discretion to add a 10 percent fee to cover the administrative costs of collecting the restitution fines.[1]

The trial court therefore properly imposed such 10 percent cost-of-collection fees on defendant, and, under the statutory provision, properly "added [the 10% collection fees] to the restitution fine[s] and included [them] in the order of the court . . . ."

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[1] Notwithstanding the slight change in language in ordinance No. 4141, providing for a "(gg) Victim restitution fee [of] $10% of amount collected," and a "(hh) Restitution fund fee [of] $10% of amount collected," the derivation shows a clear distinction between fees imposed on direct victim restitution in subdivision (gg) (which may be charged to the victim under Pen. Code, § 1201.3, subd. (l)), and fees charged to defray the costs of collecting restitution *fund* fines in subdivision (hh) (which are added to the amount of the fines charged to the defendant under Pen. Code, § 1202.4, subd. (l)).

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

RAMIREZ
P.J.

KING
J.